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MAILED

MAR 04 2011

OFFICE OF PETITIONS

In re Application of :
Mills :
Application No. 09/220,970 :
Filed: December 23, 1998 :
Attorney Docket No. RMI-018 :
For: Method and System for Pattern :
Recognition and Processing :

DECISION ON PETITION

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Petition for Review Pursuant to 37 CFR 1.181," received on June 15, 2010. The petition is being treated under 37 CFR 1.181 and 37 CFR 1.701, as a petition for patent term extension.

The petition is GRANTED.

Petitioner asserts that the Notice of Allowance mailed by the Office on March 15, 2010 is incorrect, as it states that the application is only eligible for 558 days of patent term extension. Petitioner states that the application is eligible for 1,743 days of patent term extension based on a first Notice of Appeal filed on July 11, 2000, applicants requesting reinstatement of the Appeal on August 27, 2001, a remand by the BPAI on March 22, 2005, another Notice of Appeal filed on May 21, 2007 and a Decision reversing an adverse determination of patentability by the examiner on November 28, 2009.

On July 11, 2000, a first Notice of Appeal filed.

On July 19, 2001, the Examiner reopened prosecution to set forth a new grounds of rejection.

On August 27, 2001, Applicants requested reinstatement of the Appeal.

On March 22, 2005, the BPAI remanded the application to the Examiner.

On December 21, 2006, the Office mailed a non-final Office Action.

On May 21, 2007, Notice of Appeal was re-filed.

On November 28, 2008, the BPAI made a Decision reversing an adverse determination of patentability by the examiner.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000.

The above-identified application was filed on December 23, 1998. Accordingly it is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b), in effect on June 8, 1995.

A Notice of Appeal was filed in the above-identified application on July 11, 2000. On November 28, 2008, the Board of Patent Appeals and Interferences (BPAI) reversed the adverse determination of patentability by the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal by a panel of the BPAI to the Examiner, the patent to issue from the application is entitled to an extension of the patent term.¹ The period of delay in the above-identified application is the period beginning on July 11, 2000, the date that the Notice of Appeal was filed and ending on November 28, 2008, the date of the decision by the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is December 23, 2001. Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of extension is 2533 days, the period from December 23, 2001 to November 28, 2008, including the beginning and end dates.

As a result, the period of extension is 2533 days. In accordance with 37 CFR 1.701(b), the term of a patent under this section may be extended up to a maximum of five years. The patent term extension under 35 U.S.C. 154 and 37 CFR 1.701 is five (5) years.

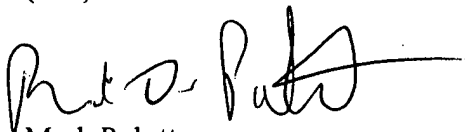
The Office's electronic record (Patent Application and Location Monitoring system (PALM)) will be adjusted to show that five (5) years of patent term extension has been accrued to the above-identified application.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing.

¹ Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.

A handwritten signature in black ink, appearing to read "Mark O. Polutta", with a long horizontal flourish extending to the right.

Mark Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy